

measure which was referred to the Committee on the Judiciary:

H.R. 419. An act for the relief of Benchmark Rail Group, Inc.

MEASURE PLACED ON THE CALENDAR

The following measure was read the second time by unanimous consent and placed on the calendar:

S. 1618. A bill to provide uniform standards for the award of punitive damages for volunteer services.

REPORT OF COMMITTEES

The following report of committee was submitted on March 14, 1996:

By Mr. MCCAIN, from the Committee on Indian Affairs, with an amendment in the nature of a substitute:

S. 487: A bill to amend the Indian Gaming Regulatory Act, and for other purposes (Rept. No. 104-241).

The following reports of committees were submitted on March 15, 1996:

By Mr. MURKOWSKI, from the Committee on Energy and Natural Resources, without amendment:

S. 1467. A bill to authorize the construction of the Fort Peck Rural County Water Supply System, to authorize assistance to the Fort Peck Rural County Water District, Inc., a nonprofit corporation, for the planning, design, and construction of the water supply system, and for other purposes (Rept. No. 104-242).

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second time by unanimous consent, and referred as indicated:

By Mr. HATCH:

S. 1619. A bill to amend the provisions of title 17, United States Code, to provide for an exemption of copyright infringement for the performance of nondramatic musical works in small commercial establishments, and for other purposes; to the Committee on the Judiciary.

By Mr. LAUTENBERG (for himself and Mrs. BOXER):

S. 1620. A bill to amend the Water Resources Development Act of 1986 to provide for the construction, operation, and maintenance of dredged material disposal facilities, and for other purposes; to the Committee on Environment and Public Works.

By Mr. GREGG:

S. 1621. A bill to amend the Silvio O. Conte Fish and Wildlife Refuge Act to provide that the Secretary of the Interior may acquire lands for purposes of that Act only by donation or exchange, or otherwise with the consent of the owner of the lands, and for other purposes; to the Committee on Environment and Public Works.

By Mr. HATCH:

S. 1622. A bill to amend the independent counsel statute to permit appointees of an independent counsel to receive travel reimbursements for successive 6-month periods after 1 year of service; to the Committee on the Judiciary.

By Mr. WARNER:

S. 1623. A bill to establish a National Tourism Board and a National Tourism Organization, and for other purposes.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. HATCH:

S. 1619. A bill to amend the provisions of title 17, United States Code, to provide for an exemption of copyright infringement for the performance of nondramatic musical works in small commercial establishments, and for other purposes; to the Committee on the Judiciary.

THE MUSIC LICENSING REFORM ACT OF 1996

Mr. HATCH. Mr. President, today I am introducing the Music Licensing Reform Act of 1996: First, to clarify the "home-style" exemption provided by the Copyright Act for the public performance of nondramatic musical works; second, to regularize the commercial relations between the performing rights societies, which license such public performances, and their licensees, who are the proprietors of eating, drinking, and retail establishments, and third, to improve in general the oversight of the licensing practices of the two largest performing rights societies, the Association of Songwriters, Composers, Authors, and Publishers [ASCAP] and Broadcast Music, Inc. [BMI].

Music licensing has been a matter of discussion for many years. There are strongly held views among all of those involved. I am committed to trying to resolve this matter, and this bill is a good-faith effort to do so. It is my hope that it can serve as a basis for further discussion.

Commercial establishments, such as restaurants, bars, and retail stores, make money off of the public performance of musical works, whether it be from live performances, from sound recordings, or from radio and television. Commercial establishments play music or turn on radio and TV in order to make the eating, drinking, or shopping experience more pleasant. The ubiquity of these kinds of entertainment itself proves that businesses believe that it increases patronage.

Recognizing that commercial establishments make money off of the creative output of songwriters, the Copyright Act of 1976 provided songwriters with the exclusive right of public performance, so that creators might share in the added value that their product creates. In doing so, the Copyright Act carries out the philosophy of the copyright clause of the Constitution, which sees economic reward as an important incentive to artistic creation.

Mr. President, the Constitution was right. In 1993, the core copyright industries contributed approximately \$238.6 billion to the U.S. economy, or 3.74 percent of the total GDP. These same core copyright industries contribute more to the U.S. economy and employ more people than any single manufacturing sector, and the growth rate of these industries continues to outpace the growth of the economy as a whole by a 2-to-1 ratio.

With domestic sales topping \$10 billion each year and annual foreign sales

totaling over \$12 billion, the music industry by itself accounts for a huge percentage of the American economy, and its popularity abroad provides a healthy component of the U.S. balance of trade. It is really not an exaggeration to say that American music dominates the globe. In fact, it is estimated that U.S. recorded music accounts for some 60 percent of the world market. Indeed, the United States is second to none in musical creativity. The prosperity of the music industry and the creative output of American composers and songwriters must be encouraged.

At the same time, Mr. President, the Copyright Act recognizes that obtaining and paying for a license to play music should not be overly burdensome. Some of the burden of obtaining such a license is lessened by the performing rights societies, such as ASCAP, BMI, and SESAC. It would be intolerable for a restaurant, bar or store to monitor all the music that it performs and then search out the individual songwriter, composer, or publisher who owns the copyright in the music. Instead, a proprietor can go to the performing rights societies and purchase a blanket license and not worry about what music it plays, since ASCAP, BMI, and SESAC account for virtually all of the music that is normally played in the United States.

EXEMPTION FOR SMALL COMMERCIAL ESTABLISHMENTS

The average cost to restaurants and retail establishments of a blanket license from ASCAP for all public performances, whether by radio and TV or live, is \$575 per year. BMI charges on the average less than \$300 per year for eating and drinking establishments for public performance by radio and TV, and its retail establishment license for these performances ranges from \$60 to \$480 per year. These are not large sums of money, but they still could be burdensome for some small commercial establishments. So the Copyright Act also provides for an exemption, freeing some proprietors from any obligation to compensate songwriters for the use of their music. This exemption is found in section 110(5) of the Copyright Act and it effectively applies to establishments that turn on radio and TV for their customers' enjoyment. It is known as the "homestyle" exemption, because it exempts "the public reception of the transmission on a single receiving apparatus of a kind commonly used in private homes." Congress felt—and rightly so—that small commercial establishments that turned on ordinary radio and TV sets would have a de minimis impact on the incentive to create that music licensing fees encourage.

Unfortunately, a certain ambiguity was introduced into the exemption by the language of the House and conference reports of the Copyright Act of 1976, and this ambiguity has been exacerbated by the courts. Although the language of 110(5) only mentions sophistication of equipment, the courts